

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUNCAN J. McNEIL, III,)	
)	
Plaintiff,)	Case No. 1:05-cv-458
)	
v.)	Honorable Richard Alan Enslen
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	
)	

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On October 5, 2005, the Court entered an Order denying Plaintiff Duncan J. McNeil, III, leave to proceed *in forma pauperis* because he has “three strikes” within the meaning of 28 U.S.C. § 1915(g). The Court subsequently denied his motion for reconsideration on November 10, 2005. This matter now is before the Court upon Plaintiff’s *ex parte* motions: (1) to proceed *in forma pauperis* on appeal without payment of fees; (2) for electronic filing access to court and for a waiver of pacer fees and electronic filing fees on appeal; (3) for appointment of counsel on appeal; and (4) for copies, records and service of the pleadings by the Clerk and United States Marshal.

Plaintiff’s motion for leave to proceed *in forma pauperis* on appeal will be denied. On October 5, 2005, the Court entered an Order denying Plaintiff leave to proceed *in forma pauperis* because he has “three strikes” within the meaning of 28 U.S.C. § 1915(g). Plaintiff failed to pay the filing fee in the required time period, and the Court dismissed the action on November 29, 2005. In the dismissal, the Court warned Plaintiff that should he file a notice of appeal, he would be required to pay the \$255.00 filing fee in a lump sum, because he is prohibited from proceeding *in forma pauperis* on appeal by § 1915(g). Plaintiff has now filed a notice of appeal, but has failed to submit the \$255.00 filing fee. As outlined in the Court’s Opinion and Order denying him pauper

status based on § 1915(g), Plaintiff is barred from proceeding *in forma pauperis* on this appeal. Plaintiff has 30 days from the date of entry of this Order to pay the entire filing fee for appealing a civil action, which is \$255.00, to the Clerk of this Court.

Plaintiff's remaining motions also will be denied. Plaintiff seeks access to the Court's electronic filing system (ECF/PACER) and for a waiver of pacer fees and electronic filing fees on appeal. However, use of the ECF system to file papers is limited to attorneys and court staff. *See* W.D.MICH.LCIVR 5.7. Plaintiff may continue to file any necessary pleadings in this Court via mail. Moreover, because Plaintiff's action was dismissed for failure to pay the filing fee, the Court will not order service of the pleadings, nor does the Court find any ground for the appointment of counsel on appeal. Therefore:

IT IS HEREBY ORDERED that Plaintiff's *ex parte* motions: (1) to proceed *in forma pauperis* on appeal without payment of fees; (2) for electronic filing access to court and for a waiver of pacer fees and electronic filing fees on appeal; (3) for appointment of counsel on appeal; and (4) for copies, records and service of the pleadings by the Clerk and United States Marshal (Dkt. No. 12) are **DENIED**.

IT IS FURTHER ORDERED that Plaintiff has 30 days from the date of entry of this Order to pay the entire filing fee for appealing a civil action, which is \$255.00, to the Clerk of this Court. Plaintiff's failure to comply with this Order may result in dismissal of this appeal without prejudice by the Sixth Circuit Court of Appeals.

DATED in Kalamazoo, MI:
December 29, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE